

2nd Annual EPA Office of Compliance Grant Conference:

Showcasing Enforcement and Compliance Assurance Results and Sharing Lessons Learned

April 15-16, 2004
Westin Embassy Row Hotel
Washington, DC

GROUP #1: OUTCOME – PERFORMANCE MEASUREMENT AND TRAINING

Presented by

David Piantanida, U.S. EPA (moderator)

Les Carlough, Oregon DEQ

Elliot Zimmerman, Washington DEQ

Virgil Masayesva, Institute for Tribal Environmental Professionals at
Northern Arizona University

Helen Waldorf, Massachusetts DEP

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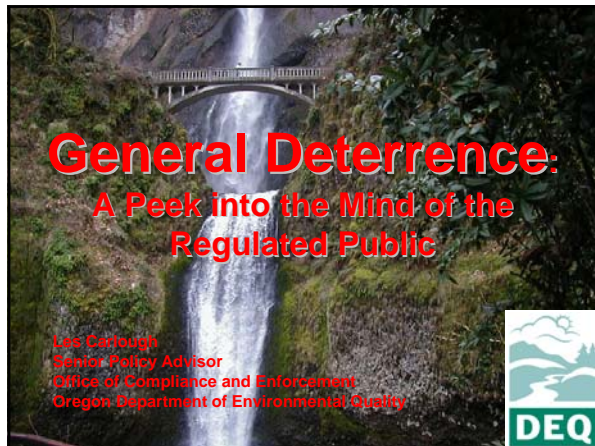
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**General Deterrence:
A Peek into the Mind of the Regulated Public**

Les Carlough

Oregon Department of Environmental Quality



Notes

Les Carlough, Oregon DEQ

Here to talk about general deterrence and the fact that the national performance measures strategy may undermine deterrence. This was evaluated by conducting two surveys.

Currently, environmental regulatory strategies focus on enforcement as the primary regulatory tool

Why?

The paradigm is that enforcement “deters” noncompliance by creating fear, and many believe that more and bigger penalties deter more noncompliance.

Notes

The idea in Oregon was to evaluate general deterrence and establish what aspects of inspections work.

Most agencies also employ other non-enforcement tools

- Small unaware sources
- Less significant noncompliance
- Ephemeral sources below our radar
- Diffuse problems
- Pro-environment behavior beyond legal requirement

Notes

NPMS Data Outcome Sets

1. Rates of noncompliance
2. **Improvements resulting from enforcement actions**
3. Improvements resulting from compliance assistance
4. Improvement resulting from integrated initiatives
5. Self-policing efforts by using compliance incentive policies
6. Average number of days for significant violators to return to compliance or enter enforceable plans or agreements
7. Percentage of significant violators with new or recurrent significant violations within two years of receiving previous enforcement action

Notes

The NPMS measures for enforcement only values pollution reduction and environmental benefits resulting *directly* from enforcement action

Notes

If enforcement creates disproportionately more indirect compliance than other tools, the NPMS will undervalue enforcement

Notes

Oregon's Project

- Is general deterrence an important factor in creating compliance?
- What aspects of inspections, penalties and other enforcement are most important in creating general deterrence?

Notes

Two Surveys

1. **General populace** to determine what factors they believe would best stimulate regulated entities to reach compliance
2. **Regulated entities** to determine what factors they consider most important in making decisions about compliance.

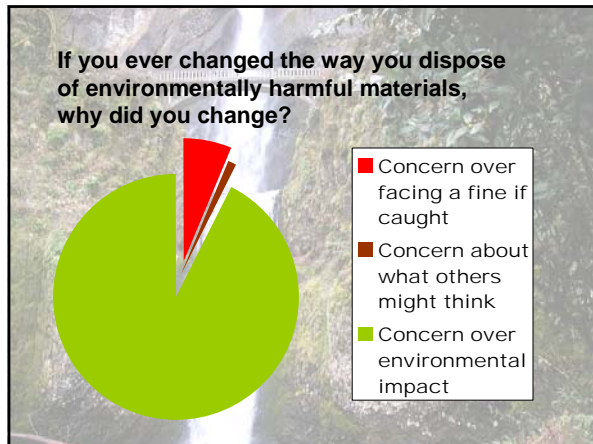
Notes

They conducted two surveys: one of regulated entities and another for the general population

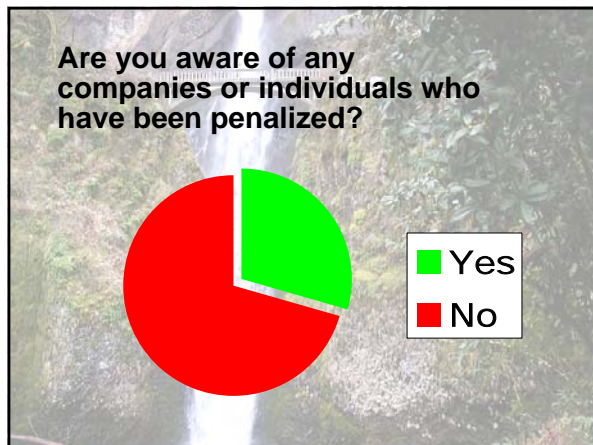
General Population Survey

Notes

General population study focused on 300 semi-random people



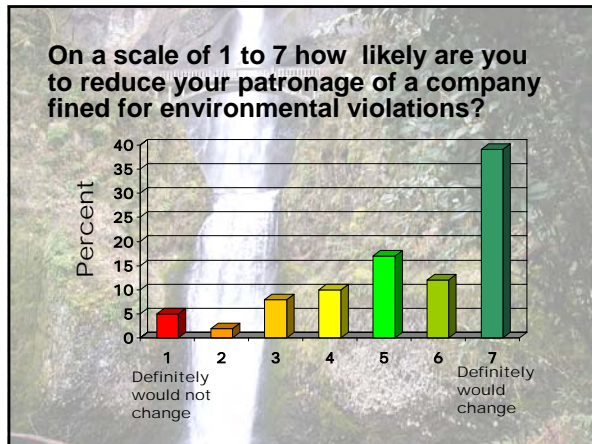
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Deterrence Lessons

- People are interested in whether the companies they deal with violate environmental laws
- But many people are unaware of who is violating

Notes

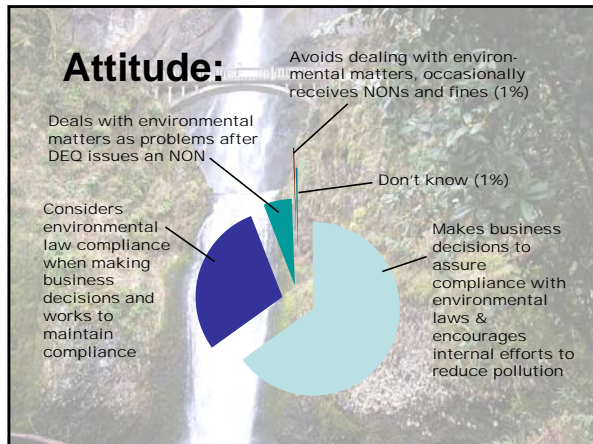
The general population seems to value the environmental reputation of companies that they purchase from; therefore, Oregon feels that it is important to get the word out about compliance to consumers.

Regulated Entity Survey

Notes

The second survey of the semi-random regulated entities was done using a consultant so it would be more neutral.

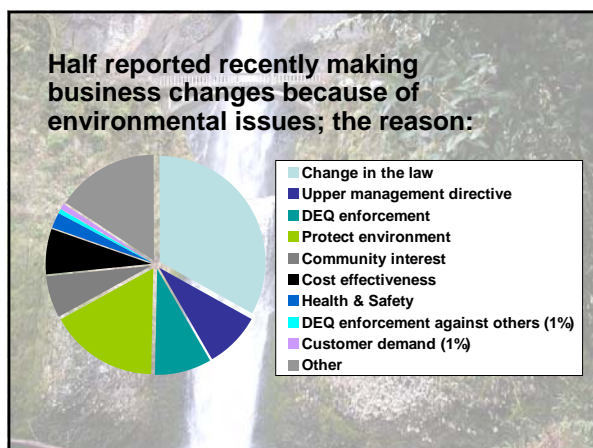
Note: The company survey did not list what kind of businesses they were.



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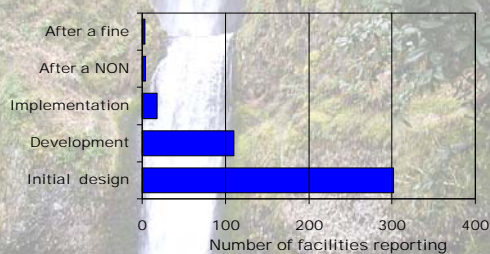


Notes



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In developing new processes, when does your company consider environmental compliance?

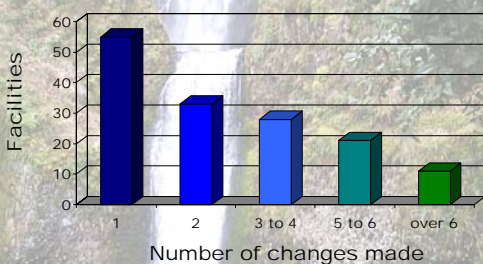


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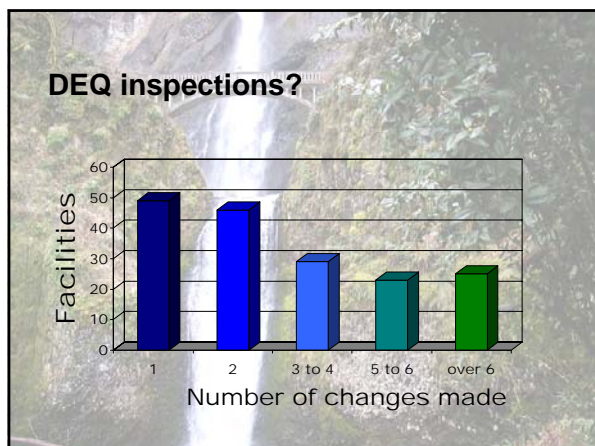
During the past three years, how often has your company made a change to its production, manufacturing or operating practices as a result of learning about . . .

Notes

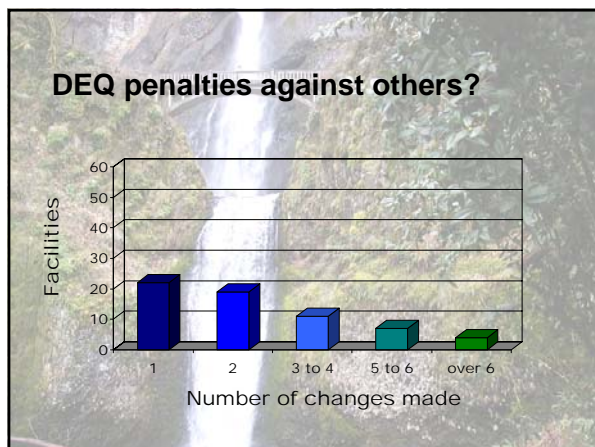
DEQ technical assistance?



Notes



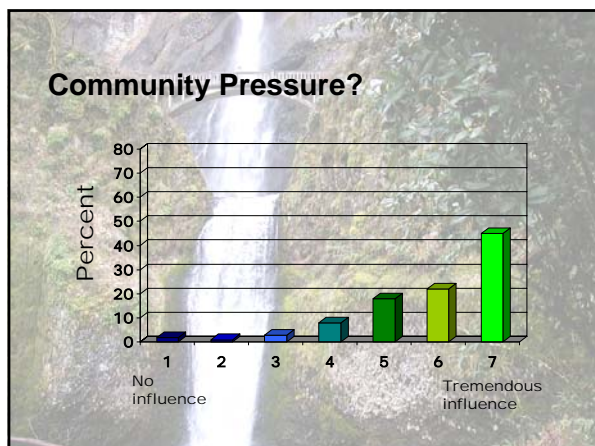
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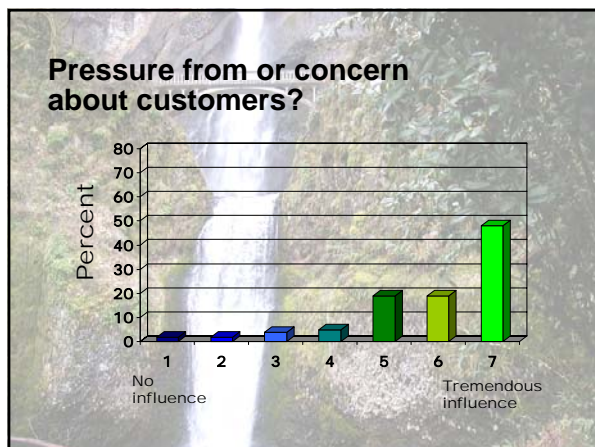
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If your company found itself in noncompliance, on a scale of 1 to 7 how influential would the following factors be in motivating your company back into compliance?

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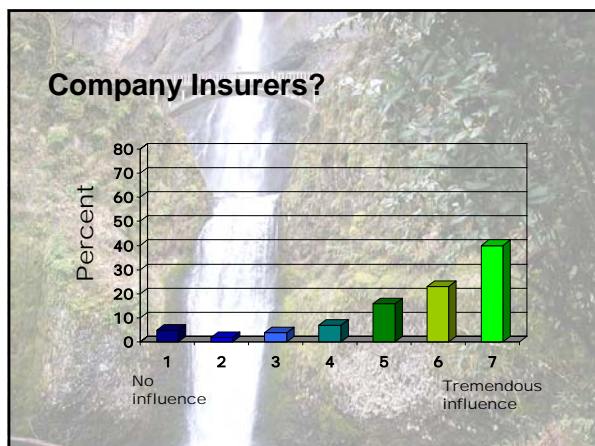
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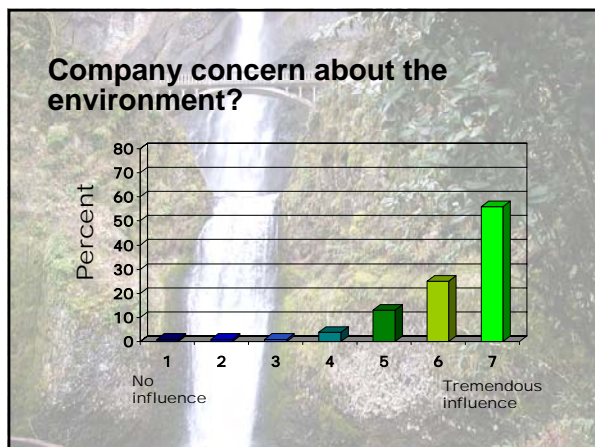
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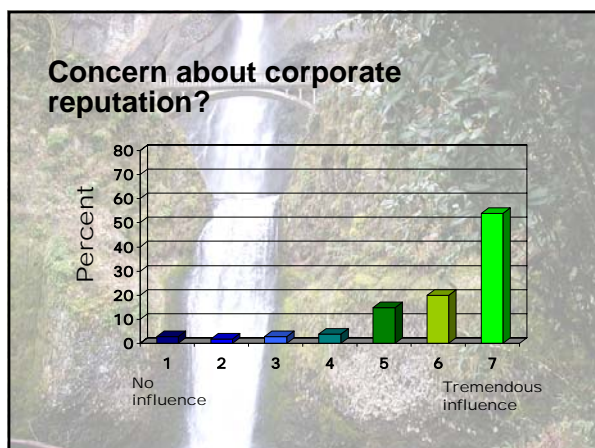
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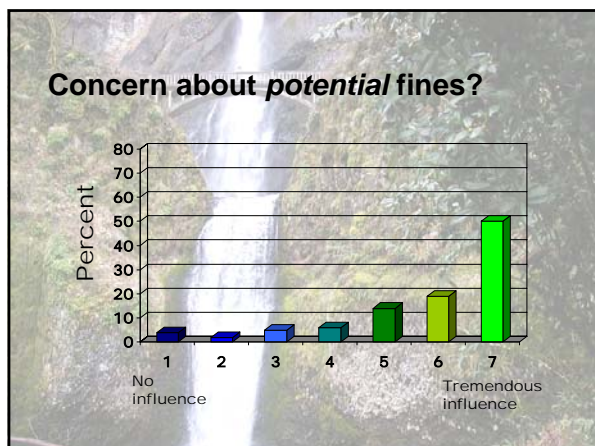
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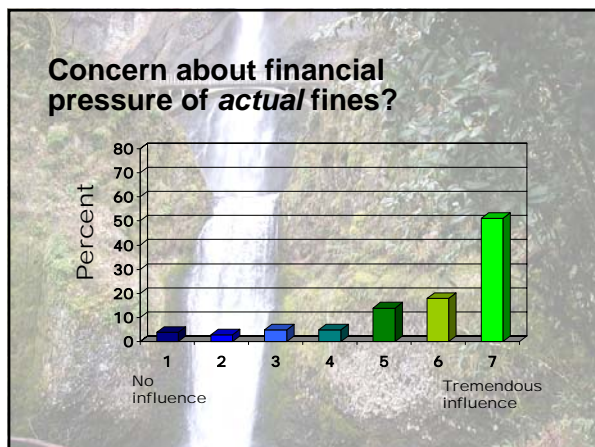
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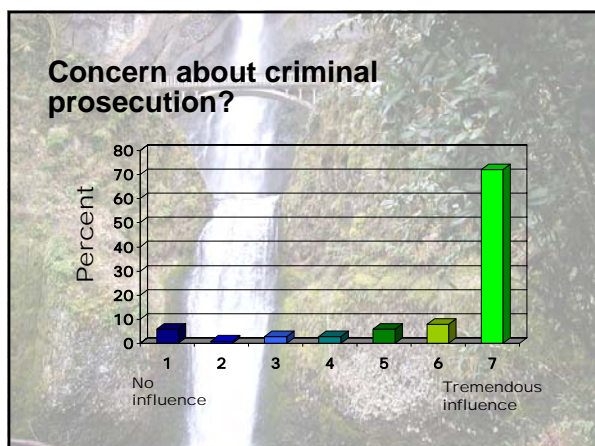
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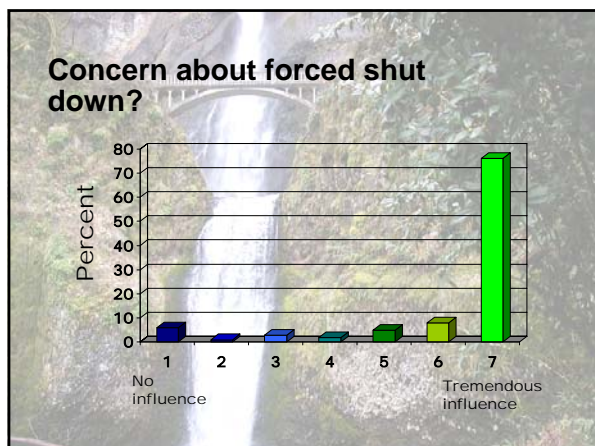
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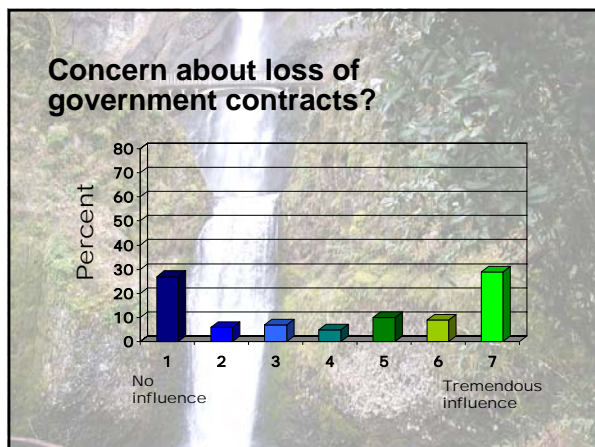
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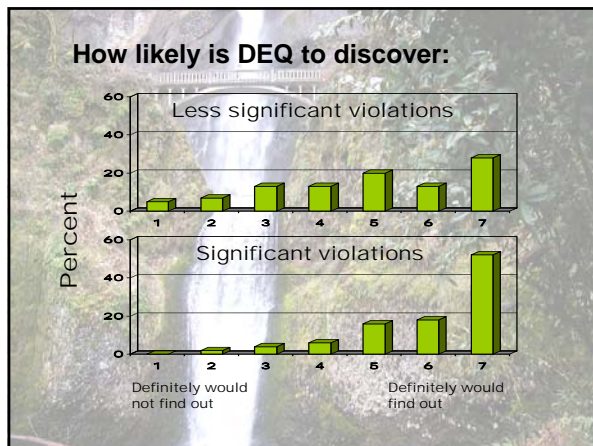


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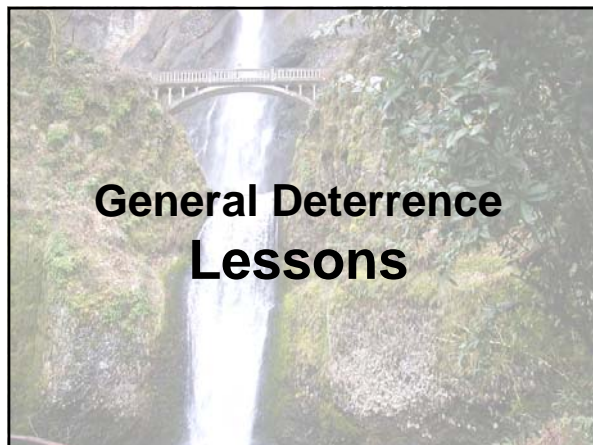
Hierarchy of company influences

Forced shut down	6.28
For the environment	6.26
Criminal prosecution	6.15
For reputation	6.02
Community pressure	5.88
Customer pressure	5.85
Actual fines	5.83
potential fines	5.81
Insurer pressure	5.62
Employee pressure	5.51
Government contracts	4.17

Notes



Notes



Notes

For the regulated population, most have penalties on their minds. They are making business changes due to changes in the law. Customer demand did seem to be undervalued. One percent of companies are thinking about environmental compliance early on in the company design stage. DEQ actions did influence companies. The most prominent influence is forced shutdown. Pressure of fines is pretty far down on the list for companies.



Notes



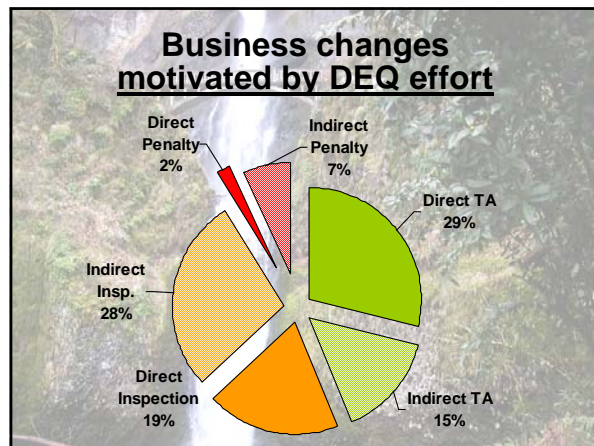
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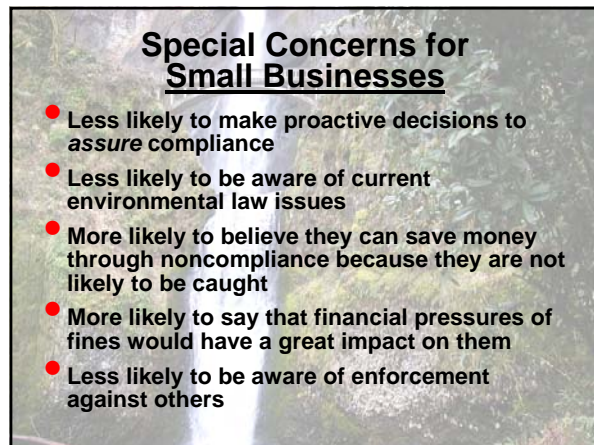


Notes



Notes

Indirect inspections and penalties seem to be better at creating deterrence. Direct inspections are a larger contributor than penalties. Penalties are a significant contributor to deterrence but inspections also seem to be a larger deal than penalties. This may be because many results can come from inspections.



Notes

Small businesses have a very different view and tend to be less aware and less responsive than larger businesses.

Questions & Answers

Q: Do you have a sense of the regulated entities you studied; do you know what sectors they come from in terms of their cost to comply?

A: It was a blind study; we don't know who was in there. But we do know where they were from and what their regulatory profile was because we had a specified universe with respect to permits, etc. Les has a lot more data than what he is showing.

Q: Would a company respond to an enforcement action taken on another similar company having a similar violation? Did they find out if the companies also reviewed their processes to see if they were in compliance?

A: No, we didn't.

Questions & Answers

Q: Criminal prosecution (slide 33) seems to be a big deterrent. Does this indicate that OR and other states should beef up criminal programs as opposed to civil enforcement?

A: OR has a large, active criminal enforcement component. The media cares about the money and the size of the penalty, but the companies are not particularly concerned.

Q: Once an enforcement action has been taken, do you send the other dischargers a notice of the violations that you found and the actions that you took?

A: We would consider this. We're trying to find better ways to get this information out. OR does a press release on larger cases and one release a month for all the cases. This got some fines into the paper that were too small to otherwise get press attention. This is a good suggestion for programs where there is a small universe.

Questions & Answers

Q: Have you made policy changes based on the survey?

A: Not yet, we're still digesting the results.

Q: How are you sharing this with other states?

A: We're presenting at conferences and it's on the EPA Web site. Les will give anyone who requests it a hard copy of the report.

Comment: ORD is funding research in Oregon to do a survey that would be a good compliment to what you're doing. Contact David Ervin at Oregon State.

Q: How many respondents surveyed had been inspected or fined? How did this influence the results?

A: One third had been penalized. Those that had been penalized were much more likely to be in compliance.

Questions & Answers

Q: Which is more effective at bringing companies into compliance, penalties or technical assistance?

A: Penalties are not as effective as technical assistance for small businesses. Technical assistance is more significant time-wise because of how resource-intensive the judicial process is for penalties. Technical assistance takes a number of different forms: workshops, phone calls, handouts, etc.

Q: Are there any clear conclusions that you see from this survey?

A: Two things are clear: 1) we need to find a better way of getting information to the public; companies do care about their corporate reputations so agency outreach is an essential link. 2) DEQ has a variety of opinions; this survey shows that DEQ must go beyond enforcement especially for small businesses that might not have time to look into what the law requires. Maybe fines need to be bigger for small and medium sized companies. The companies responded that they were still not concerned with penalties.

Questions & Answers

Q: Does OR use the BEN model, which calculates benefits and what people should pay.

A: Yes, BEN calculation is better. We use version 4.0.

Q: How many total penalties have you assessed?

A: Following 3000 inspections, 1500 notices of noncompliance, and 200 penalty actions, 2 to 3 million total penalties have been assessed.

Q: Because Oregon is fairly liberal, how would other states differ?

A: State is split between liberal and not; some are pro-environment and some not. Can't say how data compares to other states.

Questions & Answers

Q: Might enforcement be appropriate for small businesses because small businesses are more affected by reputation?

A: Small businesses were more motivated by penalties than large companies. If you could change their behavior you might be able to change the deterrence. At the current time, small businesses are not reading the papers or involved in the trade associations. In general they seem less attuned to what is going on in the industries. If this could change then we might find that enforcement would be better.

Q: Is there a separate category for media pressure (i.e., concern that their name might show up in the paper)?

A: No, and I'm not sure how that would look.

Q: What is the outcome of this grant?

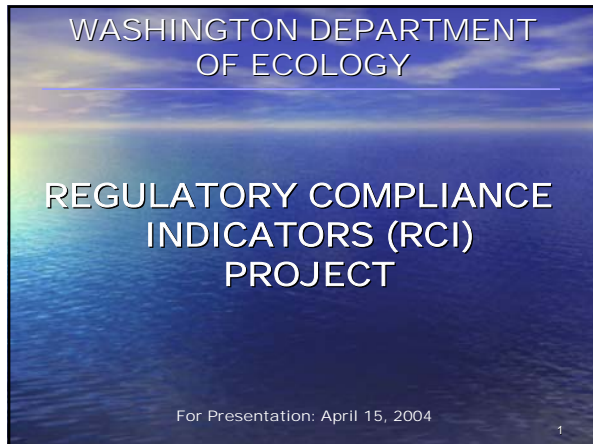
A: This is an intermediate outcome. It depends on what DEQ does with this information.



Regulatory Compliance Indicators (RCI) Project

Elliot Zimmerman

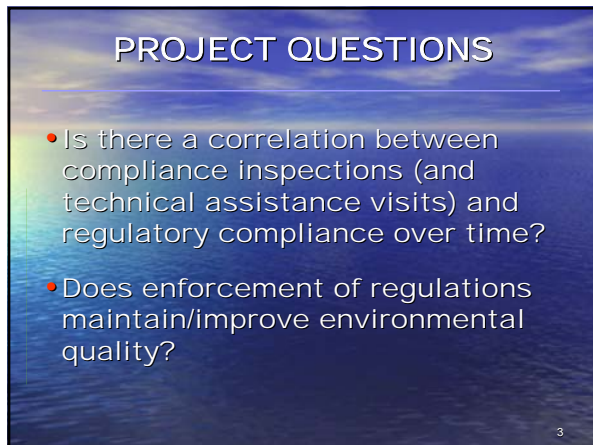
Washington Department of Ecology



Notes

Elliot Zimmerman, Washington Department of Ecology

This project was completed in 2002, but is still being talked about and used in the agency.



Notes

Study only dealt with hazardous waste civil enforcement. The point was to find out how compliance could decay over time and to see if enforcement inspections and CA visit results were similar. They worked with counties. Data quality assurance was also a big component of the project and turned out to be a huge effort. The approach could easily be applied to other programs.



Notes

Develop Best Indicator Categories

Best HW regulatory categories for Actual/Potential Environmental Threat:

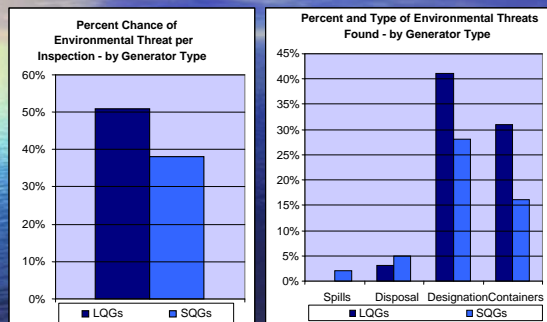
- Spill/Discharges;
- Improper/Illegal Disposal;
- Failure to Designate;
- Container Management (poor condition, incompatible with what is stored, or container open)

7

Notes

In each category they found a subset of regulations and a method of analyzing facilities. They looked for state averages to compare with other subsets, stratified by time.

State-Wide Baseline Indicators- LQGs & SQGs



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Notes

The study used large and small quantity generators (LQGs & SQGs), and separated the project time into three parts: those that had been inspected in 1994/5 but not since, in 1996/7 but not since, and in 1998. They selected facilities that were inspected in different years but who had not been inspected again since that time. If a facility had a violation they got a 1; if they did not have a violation they got a 0. These are the results based on the generator status of the facility. For the statewide average, you see that results were fairly surprising. They expected LQGs to have better compliance, but SQGs had better compliance. Of all the data they analyzed, this was the strongest correlation between generator status and compliance.

Statewide Comparison: LQGs and SQGs

- SQG Compliance is significantly better than LQG compliance
- Waste stream designation and container management are dominant compliance issues for both LQGs and SQGs.
- Since violations of designation and container management regulations cause the most problems, consider increasing technical assistance efforts in those areas.

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Notes

They expected that LQGs would have better compliance but found that small quantity generators were actually better. Small quantity generators have less waste to manage and smaller staffs, so it is harder to point fingers. In small and large generators the spills had the least violations. Designation was the largest problem, but they're not sure why. Possibly it is because Washington has more complex designation criteria than the federal RCRA.

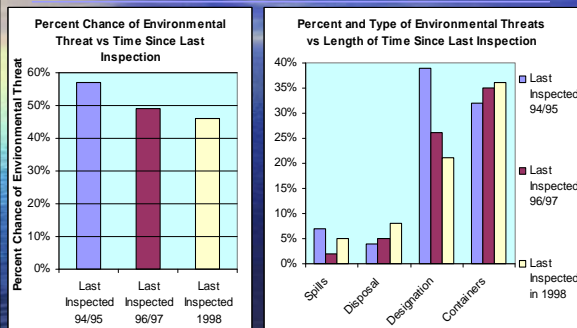
Policy Implication: LOG-SQG Compliance Difference

- Continue to devote significant resources to inspection and compliance follow-up at Large Quantity Generators;
- EPA should continue emphasis on Large Quantity Generator Inspection in the Performance Partnership Agreements with States.

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Notes

Time-Stratified Comparisons



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Notes

The last graph shows the breakdown over time by category of violation.

Last Inspection Date vs. Rate of Compliance

- Data strongly suggests the positive affects of LOG and SQG compliance inspections tend to wear off over time.
- After about 5 years, non-compliance becomes more pronounced and potential for environmental impact appears to increase.

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Notes

Five to six years after the inspection, the decay in compliance becomes pronounced. Re-examination becomes important after about 5 yrs. Before this study, the policy in WA was that reinspection should occur every 8 yrs or so; now they try for 5-6 yrs, if at all possible.

Last Inspection Date vs. Compliance Rate

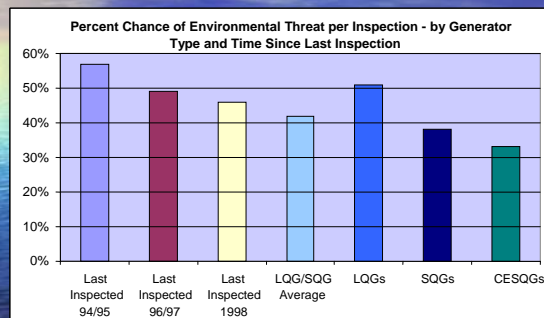
- Container management problems do not significantly change over time, even when inspections have been recently completed.
- Designation violations: Pronounced increase with greater time between inspections. May result from lack of proper designation procedures and not reviewing new/changed waste streams.

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Notes

Container violation problems do not change over time, but designation violations do. The explanation may be that container violations are from sloppy housekeeping, and are not considered that important, but designation of HW is considered more important. Regulations change over time, processes change, and people are not always sure of proper designations.

Compliance Comparisons: Time-Stratified & Generator Type



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Notes

There is a bias in the time stratification sample. SQGs are 2/3 of the universe. The best comparison is to take a weighted average. The implication is that there is a systemic bias in time-stratification. In fact, there does tend to be consistent bias with the way they inspect.

Summary of All Data Compared

- Calculated LQG/SQG weighted average is better than rates for random mix of generator types for given inspection periods. Suggests that targeting for compliance problems has occurred.
- Rate for CESQG technical assistance visits similar to SQG baseline. Even though compliance rates are the best of any group studied, this may not be specifically due to compliance visits. May be attributable to other factors, including previous technical assistance visits from local government agencies.

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Notes

One of the things they were trying to analyze was whether informal inspections are as effective as formal enforcement inspections. It is assumed that technical assistance visits would be more effective. They found that technical assistance is more effective. Data for SQGs is not comparable because they would expect 1995 to have less compliance. It is hard to compare the time-stratification and the state sample. The state was taken without attention to when the last inspection was performed.

Summary of Major Project Conclusions

- **SGQ Compliance is significantly better than LQG compliance**
- **A relationship appears to exist between compliance inspections and time since last compliance inspection. Positive effects of inspections tend to wear off over time, especially after about five years.**
- **CESQGs appear to have a higher rate of compliance than SQG or LQG facilities, but a number of factors need to be assessed when evaluating effectiveness of technical assistance visits.**

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Notes

The conclusion is kind of negative - CESQG technical assistance visits are no less effective than formal inspections. Therefore, they are committing resources to technical visits.

Questions & Answers

Q: What has the state of Washington been able to do with these findings?
A: They mostly made a change in their re-inspection policy – to reinspect in five years. In addition, because compliance in LQGs is worse than SQGs, they are putting more resources into that. They intend to use this approach to do industry targeting.

Q: Were you surprised that the rates of SQGs were higher?
A: Yes, but some people were not surprised.

Questions & Answers

Q: Who specifically offered the technical assistance, and what type of assistance was offered?
A: This gets into semantics between what's an inspection and what's technical assistance. The same staff does the formal inspections and the technical assistance. The technical assistance is a shortened informal version of a compliance inspection, and it takes fewer resources. You can do many more technical assistance visits for the price of the inspections. So if you can get a similar bang for the tech assistance as the inspections then you can channel your resources in that direction.

Q: Did the results of your survey affect your approach to container management?
A: Container management seemed to be the weakest proxy for environmental threat. This perspective was backed up by the data.

Environmental Compliance Inspection (ECI) Training for Tribes

Virgil Masayesva

Institute for Tribal Environmental Professionals

**Environmental Compliance
Inspection (ECI)
Training for Tribes**

Virgil Masayesva, Director
Institute for Tribal Environmental Professionals

John Roanhorse, ECI Program Manager
Todd Barnell, ECI Research Specialist

1

Notes

*Virgil Masayesva, Institute for Tribal
Environmental Professionals*

This is the ITEP inspector training project.

**Training for Tribal Environmental
Compliance Inspectors**

Program Objective

- To provide comprehensive information to tribal inspectors and environmental professionals on performing civil compliance inspections properly and safely.
- Assist tribal professionals in achieving technical skills.

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Notes

*They provide three types of trainings 1) basic course
2) health and safety 3) media-specific*

*Tribes do not have criminal jurisdiction but do have
civil authority to file civil penalties. Tribes act
with their sovereign authority and either partial or
complete delegation from EPA. A goal is to
provide fundamental training to tribes so that they
eventually may get federal mandate to do their
own enforcement.*

**Training for Tribal Environmental
Compliance Inspectors**

Tribal & Federal Authority

- This training program is intended to prepare participants to conduct civil inspections under Tribal authority and/or USEPA authority.
- Federal authority can only be granted by USEPA for a specific program.

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Notes

*There are only 3 major statutes for which tribes can
seek delegation or primacy: CWA, SDWA, and
CAA.*

*Course materials were developed with tribal
inspectors. The manuals incorporate lessons from
EPA and other sources. Tribal cases and mock
inspections are used as teaching tools. It is a very
interactive course design.*

Training for Tribal Environmental Compliance Inspectors

Training Course Format

- Tribal, USEPA and ITEP instructors are selected.
- Course materials are developed in collaboration with tribal instructors, ITEP staff and USEPA/NETI.
- Training manuals incorporate lessons and concepts from USEPA and other sources.

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Notes

John Roanhorse (ECI Program Manager) and Todd Barnell (ECI Research Specialist) are the leads for this work

They model ECI on their experience working with the tribes on air quality.

Training for Tribal Environmental Compliance Inspectors

Training Course Delivery

- Classroom instruction usually includes:

- ✓ Case studies
- ✓ Hands-on exercises
- ✓ Mock Inspection
- ✓ Discussion
- ✓ Computer lab



- Depending on its media emphasis, an individual course can be modified to meet participant's needs.

9

Notes

The training is designed to be fairly interactive. It can be modified to meet participants' needs.

Participants may be working with different media, which allows representatives from different tribes to share experience and knowledge. Diversity of media helps the course effectiveness. Inspectors are used as classroom instructors.

Training for Tribal Environmental Compliance Inspectors

Training Course Instructors

In addition to ITEP staff we have used classroom instructors from:

- Coeur d'Alene, Delaware, and Quechuan Tribes
- Inter-Tribal Council of Arizona
- Staff from USEPA Regions 4, 6, 7, 8, and 9
- Staff from OECA and NETI

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Notes

This is a list of sources of instructors

Again, this training is modeled after the air quality training course. EPA needed to be included in instructional staff, so they included them along with tribal instructors.

Initially, the air tribal folks were wary about having EPA at the courses, but the tribes later expressed that they did want them there. The new course under the domain of EPA found that it is best to have EPA folks in the room working with the tribal instructors.

Training for Tribal Environmental Compliance Inspectors

Course Participants by Position

Environmental Inspectors:	11
Environmental Directors:	32
Environmental Assistants:	6
Environmental Technicians (multi media):	21
Officers (compliance, enforcement, etc):	8
Media Specialists: (water, pesticides, air, emergency response, solid waste, etc.)	40
Tribal Administrators/Council Members:	1
Regulatory Commissioners:	2

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Notes

This slide shows the breakdown of people who have so far attended the courses – participants come from different media programs.

Many participants are not inspectors, but come to the class to learn about basic enforcement.

As the tribes develop their regulations, they are now getting ready to enforce and some are seeking delegation from EPA. Some are at the beginning stages of their regulatory development.

ECI Courses Offered: 2002-2003

Training Locations

- Tribal Basic Inspector Course
Flagstaff, AZ, January 2002
- FIFRA Training Course
Mesa, AZ, March, 2002
- Tribal Basic Inspector Course
Flagstaff, AZ, April, 2002
- UIC Training Course
Kansas City, KS, June, 2003
- Tribal Basic Inspector Course
Las Vegas, NV, August, 2003
- Tribal Basic Inspector Course
Denver, CO, October 2003

Number of Participants

17

14

24

10

30

30

15

Notes

ECI Courses Planned: 2004

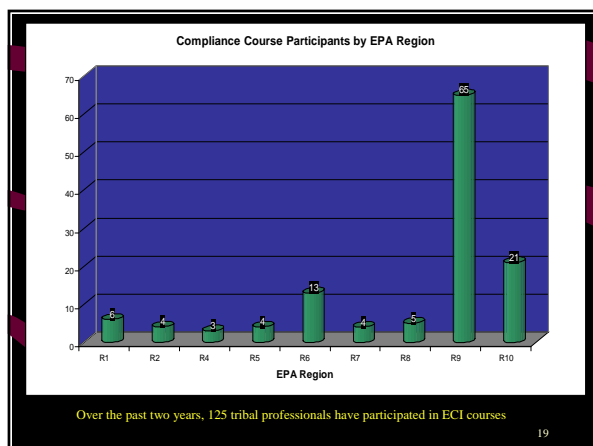
- Media Specific: FIFRA
Mesa, AZ, May 25-28, 2004
- Tribal Basic Inspector Course
Oneida, WI, July 20-23, 2004
- Media Specific: NPDES
Las Vegas, NV, August 17-20, 2004
- Tribal Basic Inspector Course
Seattle, WA, September 14-17, 2004



Mock Inspection

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Notes



Notes

This graph shows number of participants by Region; most have been tribes from Region 9

NETI does basic inspections, but there was a good deal of information that did not pertain to tribes (e.g., criminal information). This was adapted from the NETI manuals.

There are a few tribes with regulatory commissions. Tribal environmental programs are young compared to the state programs – mostly less than 10 years old. Some tribes are doing monitoring.

Tribal Basic Inspector Course: Agenda

- Session 1: Introduction to Course
- Session 2: Summary of Environmental Statutes
- Session 3: Inspector Issues
- Session 4: Inspector Planning and Administrative Issues
- Session 5: Sources of Information
- Session 6: Entry, Opening Conference, and Site Inspection
- Session 7: Field Documentation
- Session 8: Interviewing
- Session 9: On-Site Records Review
- Session 10: Sampling and Laboratory Issues
- Session 11: Closing Conference
- Session 12: Inspection Reporting
- Session 13: Enforcement Process Responsibilities
- Session 14: Mock Inspection
- Session 15: Case Study (Gila River Indian Community)



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Notes

FIFRA Inspector Course: Agenda

- Session 1: Introduction to Course
- Session 2: Credential Issues and Authority
- Session 3: Case Study (Gila River Indian Community)
- Session 4: Pesticide Registration
- Session 5: Relevant Enforcement Issues
- Session 6: Legal Requirements
- Session 7: Evidence Gathering
- Session 8: Sampling
- Session 9: Photography
- Session 10: Interviewing
- Session 11: Preparing Statements and Affidavits
- Session 12: Types of Inspection
- Session 13: Violations/Proof
- Session 14: Mock Inspection
- Session 15: Report Preparation
- Session 16: Case File Assembly
- Session 17: Enforcement Response Policy



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Notes

UIC Inspector Course: Agenda

- Session 1: Introduction to Course
- Session 2: Regulations and Policy
- Session 3: Safe Drinking Water Act and Primacy Issues for Tribes
- Session 4: Injection Classification
- Session 5: Inspector Issues
- Session 6: Watershed Protection
- Session 7: Class V Program Overview
- Session 8: Class II Program Overview
- Session 9: Sampling
- Session 10: Inspection Report Writing
- Session 11: Inspection Requirements
- Session 12: Small Group Exercise
- Session 13: Site Visit
- Session 14: Safety Issues
- Session 15: Tribal Case Study



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Notes

Training for Tribal Environmental Compliance Inspectors

Lessons Learned

- Since the ECI program was initiated in 2002, interest among tribal staff in civil enforcement authority and compliance assistance training has grown immensely. The last TBIT course attracted nearly fifty applications from tribes in every USEPA Region.
- Course participants have indicated through evaluations and reflective writing exercises that the basic inspector training is vital, but they are also interested in achieving regulatory authority in specific media, and would therefore like to see other courses developed.

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Notes

Lessons learned: As ECI program interest has grown, they are receiving many applications and had to cap class size. Participants have indicated that the inspector training is vital but they want regulatory authority in the media programs and want courses to bring this authority into being.

More staff are conducting inspections, and ITEP has to train more inspectors. The number of tribal inspectors is limited, but they need to expand this pool of experts. The best way to develop experts is to use the individuals that are working on the reservations.

Training for Tribal Environmental Compliance Inspectors

Lessons Learned (Continued)

- As more tribal staff take the next step and begin conducting their own inspections and developing extensive regulatory programs, it is necessary that ITEP increases the number of tribal instructors with specific expertise assisting with course development and execution.
- As these tribes develop their own environmental regulations, and seek primacy under federal legislation, training opportunities need to be available in various locations and tailored to their specific needs.
- Networking is the key to success. Relationships between ITEP and the USEPA, state agencies and tribal departments must continue to be developed and strengthened.

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Notes

After each class the participants have time to do reflective writing about their course experience. ITEP looks at these evaluations and make adaptations. Networking is key, ITEP and EPA state agencies are key and more collaboration is necessary. There can be issues over jurisdiction.

Future plans: Want to grow based on the needs of the tribes.

Training for Tribal Environmental Compliance Inspectors

Lessons Learned (Continued)

- ITEP must not take a cookie-cutter approach to compliance training. Every course has participants with different skill levels and unique needs. Flexibility must be maintained in course development and execution.
- For Example: Allowing networking possibilities for water quality specialists to share their specific experiences in a TBIT course with other participants – many who may specialize in other media or work on several media at once – allows for a deeper understanding of the issues by everyone.

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Notes

Training for Tribal Environmental Compliance Inspectors

Future Plans

- Over the last two years, the number of tribes participating in compliance training has dramatically grown. ITEP will work on encouraging this trend, providing courses in a variety of locations.
- Based on comments from course participants, ITEP will continue to modify and improve the course content to reflect the needs of the tribal staff.
- Working with federal and tribal staff, ITEP will work on developing new courses covering other programs, such as NPDES.
- ITEP will work to establish a cadre of tribal inspectors to assist with compliance training in Indian Country.

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Notes

Questions?

John Roanhorse
John.Roanhorse@nau.edu
520-884-9229

Todd Barnell
Todd.Barnell@nau.edu
928-523-3840

www.nau.edu/itep

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Questions & Answers

Q: Do you have plans to do training in the Albuquerque/Santa Fe area?
A: No immediate plans

Q: Do you do any on-site training?
A: Funding does not allow, so they pick a general location. However, with clean air training they do follow up with technical support.

Q: What about the federal credential?
A: That is their long-term goal. These are fundamental courses right now – want these trainees to go on to get federal credentials EPA regions make the decisions on a case by case basis.

Questions & Answers

Q: Is there any chance that you might coordinate with states to do tribal internships so that tribes could shadow states and learn about inspections?

A: That's a great idea. Each state has different relationships with their tribes, and this may go on where the tribe has a good relationship with the state.

Q: What might be the long-term goal or outcome of this?

A: It's infrastructure development for the tribes. The tribes are going to need to develop laws and regulations and then develop the infrastructure to enforce them. The long-term goal is for these things to be put in place first. There are constant challenges on the tribes as they develop rules and regulations that they want to enforce. Tribes need to develop the capacity to ensure that folks enforcing the environmental regulations know what they are doing.

**The Environmental Results Program
What is ERP and why should you care?**

Helen Waldorf

Massachusetts Department of Environmental Protection

The Environmental Results Program

What is ERP and why should you care?

Notes

Helen Waldorf, Massachusetts DEP

Larger context: how are we going to keep protecting the environment with fewer and fewer resources? ERP has huge results. How do you make this sustainable? How do you help people sustain these gains? The answer is the Environmental Results Program (ERP).

The Environmental Results Program

- Relies on Self-Certification
- Includes multi media compliance.
- Includes pollution prevention in air, water and waste.
- Measures success.



Notes

The ERP relies on self-certification and measures success. ERP grew out of a program that was the result of many EPA grants. They had done random audits and found that businesses had the big compliance issues covered. But the paperwork issues were a different issue.

Why Does ERP work?

How will it protect the environment and get facilities to comply with regulations?

Notes

ERP puts accountability back on the industry, and creates ways facilities can evaluate themselves. Random inspections of people who have self-certified – dry cleaners, printers and photo-processors – showed that those people had good compliance for big things, but paperwork issues showed little difference between self-certifiers and others. The big stuff that takes pollution out of the environment is directly related to doing self-certification and going through the workbook.

New management tool for pollution prevention and compliance



- A new idea to get better compliance.
- For industry, state agencies, municipalities, regulatory agencies.
- Especially effective for small businesses

Notes

This is very effective for small businesses. It is like a mini-EMS for small/medium business – it makes them go through the same process.

It is trying to put the accountability back on the regulated community. Rely on selected audits to keep people honest.

Responsibility and accountability



- Relies on accountability in the regulated community.
- State agency can do streamlined enforcement of certification.
- State agency can rely on selective audits.

Notes

Selective audits make sure certifiers fill out their certifications correctly

Why does ERP work?

- Improving environmental compliance, in some ways, is like city crime prevention programs.



Notes

What makes it work? ERP requires open mindedness. We can spend less time chasing these guys if we can get them to pay more attention. It does not replace traditional enforcement. They target those that don't certify. Some regulatory agencies like it, and other states have adopted it.

Successful crime prevention needs two parts:

- Traditional arrests and prosecution of criminals by police.
- Community policing where everyone in the neighborhood is involved in crime prevention.

Successful environmental compliance also needs two parts:

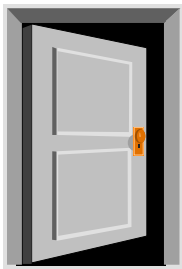
- Traditional inspections and penalties by regulatory agencies.
- ERP where everyone in the regulated community takes responsibility for the environment.

Notes

A word of advice: do NOT do ERP without automation. E-filing and good data systems are essential. Enforcing the little violations helped them catch larger violators. Analogy with policing – stopping people for small crimes like littering effectively stopped people from carrying guns, because those people stopped breaking larger rules.

They also asked the communities around these businesses what they wanted. The community took an interest in the ERP process and would ask the businesses in their area if they had done their environmental certification.

What we need to make ERP work:



- Keep an open mind.
- Involve regulated community.
- Discover the “business case” for ERP and why industry and public agencies like it.
- Recognize the ability to streamline compliance and enforcement.

Notes

Programs like ERP do not replace traditional enforcement. DEP now targets those that don't certify.

There are many ways to reach environmental goals:



- ERP is a new trend which complements but does not replace traditional enforcement.
- Regulatory agencies in Florida, Tennessee, Maryland and Rhode Island like it!
- Not revolution but evolution.

Notes

Some other states have implemented some version of ERP

How do We do Enforcement at Mass. DEP?

The Administrative Penalties Act
What it really says
(and why you want to know)

Notes

DEP must tell the party about what they did wrong.



- In other words DEP must issue a written notice of non compliance for a violation.
- We call it an NON or "Lower Level Enforcement"
- EPA calls this an NOV

Notes

DEP issues a notice of non-compliance. This is lower level enforcement. It tells the regulated entity that they are in violation, if they do it again the state can administer a penalty.

If the party does not correct their mistake...

- **After** DEP notifies a regulated entity, and gives them a reasonable opportunity to comply, and they fail to comply, then DEP can issue an administrative penalty.



Notes

In Traditional Enforcement

- DEP Spends a lot of time:
- Inspecting facilities
- Documenting violations
- Patterns of Noncompliance
- Significant impacts
- Calculating and justifying penalty amounts.
- This is (no duh!) resource intensive

Notes

Traditional enforcement – works by catching the bad guy. For some facilities this is appropriate.

They spent time in Massachusetts going in and writing down all the violations and identifying patterns of non-compliance, which is very resource intensive. If you are spending the resources then it should be a very bad guy, not a paperwork violation.

Why is this important? For some facilities that don't comply and don't care, this is important. Some need a higher level of enforcement, the things DEP spends a lot of time on.

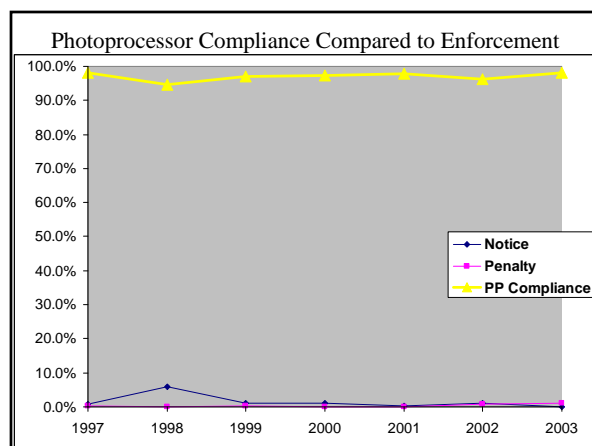
ERP Streamlined Enforcement

- Enforce against a single violation: failure to submit a certification.
- Do it from the office
- Rely on automation
- First use notices
- Then use small penalties—it's a speeding ticket!



Notes

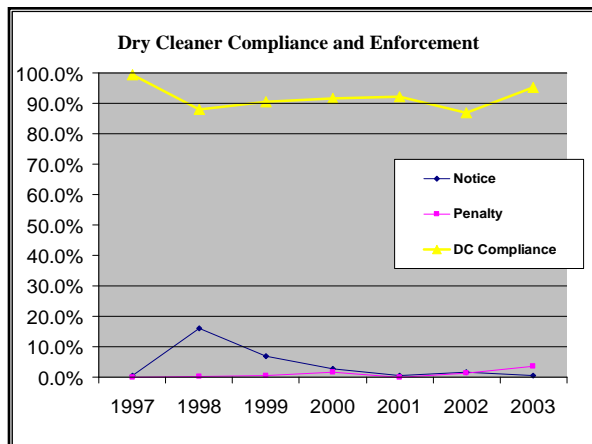
Streamlined enforcement is one of the big benefits of ERP. If you believe that the certification gets the big stuff, you can enforce against a single violation. You can do it from the office by looking at who didn't certify and who gets a Notice of Violation (NOV)



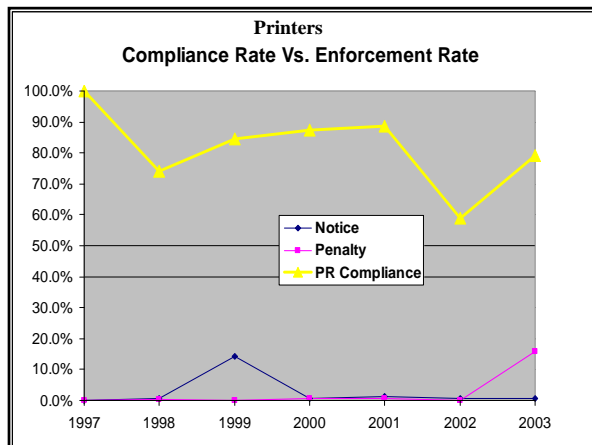
Notes

Graphs: the regulated community seems to be getting it. If an industry is coming in above 90% then the self-certification is working and does not need focus.

Photo-processors already had good compliance in Massachusetts. Many are going to digital.



Notes



Notes

Printers – very mixed. Had trouble getting the word out at first, then did a lot of “carpet bombing” by sending out NOV’s. The drop in compliance problems was in part due to data cleanup.

Use Audits to Evaluate the Certification

- They can be random
- They can provide measurement of environmental benchmarks
- It will keep certifiers honest
- Can always follow-up with enforcement for “hard-core” cases

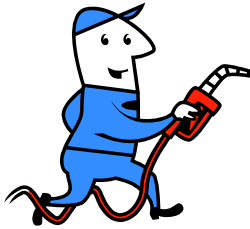


Notes

Self-certification: an audit gives us the opportunity to work with the regulated community. Good training for association. If you believe that certification gets the big environmental toxins, you can find out who has not certified.

Keeps people honest with audits, enforcement, benchmark, and higher penalties. Can do press releases too.

At Gas Stations

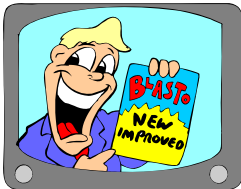


- Must annually certify
- Focus is vapor recovery
- Recently developed the ERP enforcement tools.
- Have 92% of flow (gallons pumped) under certification.
- Goal of enforcement: 96% of flow under certification.

Notes

The state is now starting to repeat history with gas stations. 92% of the gallons pumped in Massachusetts are now under a self-certification, their goal is to get up to 96%. Vapors are not going into the air.

New Developments: Beyond ERP



- **Reduced inspections and streamlined enforcement policy.**
- **Careful targeting based on data based assessment.**
- **More auditing of certifications**
- **ERP Case Studies from Enforcement.**

Notes

ERP can reduce inspections and can go from inspections to audits. More ERP type case studies. One of the points is to get people up to speed. The regulation now says that every year those facilities need to certify. It will probably let them go down to every five years in the future if the data looks good.

Questions & Answers

Q: If certification is mandatory, how do you get 100 percent and how do you know what percent of the total they are, compared to the population of facilities that should certify?

A: They do a lot of research to identify the universe, and don't always know if they've got them all. The numbers on the graphs are people that have certified once. There must be ways to encourage facilities to certify rather than wait for enforcement actions.

Questions & Answers

Q: The auto body shop inspector corps is complaining that they have out of date information about who exists. Can they also get certification back that says non-compliance?

A: Automation is key to keep track of them. At a minimum if you are doing audits then you are not spending as much time. ERP sends a message to the regulated community.

Q: Did you reduce the workload at the Department and did you charge fees?

A: We charge everyone a small fee, small relative to the penalty certainly.

Debriefing Session – Tom Hansen and David Piantanida, moderators

From David Piantanida –

We heard from four speakers in first panel discussing performance measurement and training:

Les Carlough talked about how his project has sought a paradigm shift – finding enforcement and other strategies that work or look like they could work at Oregon DEQ. There are strategies in OR that are working and it may take sometime before ORDEQ will know if they are making a difference. There were two points to highlight:

- Companies appear more concerned with possible inspections than with possible penalties
- Companies also seem to be concerned about their environmental and corporate reputation

Elliot Zimmerman talked about a correlation between compliance inspections and regulatory compliance over time. This had led to a change in inspection policy, and may allow for a shift in allocation of resources in Washington. They also noticed that SQG compliance is significantly better than LQG compliance.

These findings may allow for better use of resources and a change in enforcement policy.

Virgil Masayesva presented the one training project on the panel. Virgil talked about building tribal capacity on Indian Country. Most of ITEP's work is in Region 9, and most of the tribes are in the western US (many in Region 9). He also reminded us that they are interested in civil compliance among multiple media programs.

Helen Waldorf talked about the Environmental Results Program (ERP), which is a program that makes a lot of sense. Helen made a connection between the morning and afternoon talks. The complaint system and the “virtual community” concept are related. They found that self-certification sometimes leads to increased compliance. However, there are some unintended consequences of doing this. Other people are now asking for this information, and there are concerns about business competitors being able to access important information. Massachusetts had huge battles about getting things out on the Web. Don't be surprised when you get a big political push back.

From Tom Hansen –

I'm not really a grants person, but I'm a state liaison.

We tend to think more globally, and much of what we've been talking about today is different pieces of the puzzle. State oversight is a large issue right now, as is public outreach. Other issues of great importance are data quality and consistency, ability to manage programs and resources, and streamlining. We found out that NEPPS is getting

its head above water, and I'm the state coordinator. You just can't manage your state programs without some of these systems. Streamlining – data sharing, automatically sending out violation notices, these things save a lot of time and reduce confusion. I was very impressed by the speakers today.